

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.³

Margaret H. McFarland,
Deputy Secretary.

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[Release No. 34-35796; File No. SR-NYSE-95-20]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by New York Stock Exchange, Inc., Relating to the Annual Maintenance Fee for Registered Persons

June 1, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. § 78s(b)(1), notice is hereby given that on May 24, 1995, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to increase the annual maintenance fee for registered persons from forty-six (\$46.00) to fifty-two dollars (\$52.00). The proposed fee change will be implemented July 1, 1995.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries as set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the annual maintenance fee for registered persons from forty-six (\$46.00) to fifty-two dollars (\$52.00). The annual maintenance fee charged all persons registered with the Exchange was originally adopted in 1976. The fee is intended to offset, in part, the costs incurred by the Exchange in the oversight of member organizations' sales practice activities. The fee was last increased in 1988 to its current forty-six dollar (\$46.00) level.

On February 8, 1995, the SEC approved rules filed by the Exchange and other self-regulatory organizations to implement an industry-wide continuing education program commencing July 1, 1995.¹ six dollar increase in the annual maintenance fee is required to offset the increase in costs the Exchange estimates it will incur as a result of incorporating oversight of member organizations' continuing education programs into its annual field examination process.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Securities Exchange Act of 1934 because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge

imposed by the Exchange and, therefore, has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the New York Stock Exchange. All submissions should refer to File No. SR-NYSE-95-20 and should be submitted by June 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 95-14122 Filed 6-8-95; 8:45 am]

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[Release No. IC-21110; 812-9552]

IMG Mutual Funds, Inc., et al.; Notice of Application

June 2, 1995.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: IMG Mutual Funds, Inc. (the "Company"); the IMG Equity Trust (the "Equity Trust"); The IMG Income Trust (the "Income Trust," and together

³ 17 CFR 200.30-3(a)(12) (1994).

¹ Securities Exchange Act Release No. 35341 (Feb. 8, 1995), 60 FR 8426.

with the Equity Trust, the "Trusts"); Investors Management Group, Ltd. (the "Adviser"); and certain persons who may be deemed to be affiliated persons, or affiliated persons of affiliated persons, of the Company (the "Affiliated Persons").

RELEVANT ACT SECTIONS: Order requested under section 17(b) for an exemption from the provisions of section 17(a).

SUMMARY OF APPLICATION: Applicants seek relief to permit the exchange of shares of the Company for portfolio securities of two private investment trusts that are not registered under the Act. After the exchanges, the Trusts will dissolve and distribute the shares of the Company they receive *pro rata* to their participants.

FILING DATES: The application was filed on March 27, 1995 and amended on May 8, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 27, 1995, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 720 Liberty Building, 418 Sixth Avenue, Des Moines, IA 50309-2410.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Senior Attorney, (202) 942-0565, or C. David Messman, Branch Chief, (202) 942-0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Company is registered under the Act as an open-end diversified management investment company consisting of two series, the Stock Fund and the Bond Fund (together, the "Funds"). The Company's registration statement under the Securities Act of 1933 (the "Securities Act") has been

declared effective but no offering of the shares of the Funds has commenced. Each Fund will offer shares in three classes in reliance on rule 18f-3 under the Act. The classes will differ solely on the basis of minimum and routine investment requirements, and distribution and shareholder servicing fees. Classes of shares of the Funds will not be sold with any sales charge but will pay varying rule 12b-1 distribution fees under certain circumstances. The Company also may impose contingent deferred sales charges in the future. The Funds may, from time to time, enlist the assistance of an outside broker-dealer to market shares in the Funds. The Adviser will act as investment adviser to the Funds. The Adviser is registered under the Investment Advisers Act of 1940.

2. The Trusts were formed in 1991 as common law revocable grantor trusts under the laws of the State of Iowa. The Trusts have not registered under the Act in reliance on section 3(c)(1) of the Act, and the interests therein have not been registered under the Securities Act in reliance on section 4(2) of the Securities Act. Each participant in the Trust (a "Participant") established a separate revocable grantor trust under an individual Trust Agreement appointing Richard A. Westcott ("Westcott"), David W. Miles ("Miles") and James W. Paulsen ("Paulsen") to serve as Co-Trustees and authorizing the commingling of Participant funds in a single account. Westcott, Miles, and Paulsen are each directors and controlling persons of the Adviser, and directors of the Company. The Adviser selects the investments for the Trusts.

3. The Affiliated Persons consist of: (a) directors, principal shareholders, and employees of the Adviser, (b) spouses of the foregoing, (c) entities that are owned or controlled by one or more of the foregoing, and (d) trustees and/or participants in the Trusts who could be deemed to be affiliated persons, or affiliated persons of affiliated persons, of the Company under section 2(a)(3) of the Act.

4. Applicants propose that, prior to offering shares of the Stock Fund to the public, the Stock Fund will acquire portfolio securities of the Equity Trust in exchange for shares of the Stock Fund equal in value to the net asset value of the Equity Trust. The Equity Trust then will dissolve and distribute the Stock Fund shares it receives to its Participants *pro rata*, along with cash received from the sale of portfolio securities, if any, of the Equity Trust not acquired by the Company. A like exchange of shares of the Bond Fund for portfolio securities of the Income Trust will take place, followed by the

distribution to Participants and dissolution of the Income Trust (together, the "Exchanges"). Participants will receive that class of shares of the Stock Fund or the Bond Fund with the lowest expenses that they would otherwise be qualified to purchase based on the value of their Trust accounts. Following the Exchanges, Participants of the Trusts will hold all of the shares of each Fund, except for shares representing seed capital contributed to the Funds by the Adviser or one of its affiliates pursuant to section 14(a) of the Act.

5. Currently, on an annual basis, the Equity Trust incurs investment advisory fees of 1.25% and total expenses of 1.50%, and the Income Trust incurs investment advisory fees of 0.75% and total expenses of 1.00%. Following the Exchanges, the Stock Fund is expected to incur investment advisory fees of 0.50% and total expenses, which will vary among the different classes, of between 0.85% and 1.35%. The Bond Fund is expected to incur investment advisory fees of 0.30% and total expenses, which will vary among the different classes, of between 0.60% and 1.00%. Based on current valuations of the Trusts, the Adviser does not anticipate that any Participant will pay more expenses directly or indirectly for the Company shares received than what they are currently bearing as Participants in the Trusts.

6. Applicants would like to convert the Trusts to registered investment company form because the Trusts have proven to be more popular than originally anticipated and because of continuing investor interest in the Trusts. In contrast to the Trusts, which are not registered under the Act in reliance on section 3(c)(1), the Funds will not be subject to any limitation on the number of shareholders.

7. After the Exchanges, the Adviser intends for the foreseeable future to manage the assets of the Funds in substantially the same manner as it did for the Trusts, except as may be necessary or desirable: (a) To qualify the Funds as regulated investment companies under the Internal Revenue Code; (b) to comply with investment restrictions adopted by the Funds in accordance with the requirements of the Act or securities laws of states where shares in the Company will be offered; or (c) in light of changed market conditions.

8. The Exchanges will be effected under agreements and plans of exchange (the "Plans") to be approved by the Participants of the Trusts, in accordance with the respective Trust Agreements and the laws of the State of Iowa. A

registration statement under the Securities Act on Form N-14 relating to the Exchanges has been filed on behalf of the Company. Consent of the Participants of the Trusts for approval of the Plans will be made by means of a prospectus/information statement that forms part of the Form N-14 registration statement. The prospectus/information statement will describe the nature of and reasons for the Exchanges, the tax and other consequences to the Participants, and other relevant matters, including comparisons of the Funds and the Trusts in terms of their respective investment objectives and policies, fee structures, management structures, and other aspects of their operations, as well as the financial information required by Form N-14.

9. The Exchanges will not cause taxable gain or loss to be recognized by the Participants. As a result of the Exchanges, however, the Funds may acquire securities that have anticipated in value or that have depreciated in value from the date they were acquired. If appreciated securities were sold after the Exchanges, the amount of the gain would be taxable to future shareholders as well as Participants.

10. No brokerage commission, fee, or other remuneration will be paid in connection with the Exchanges. Neither Participants nor the Adviser or the Affiliated Persons will receive any financial benefit from the Exchanges (except as described in paragraph 9 above), apart from their *pro rata* interests in Company shares and other property distributed by the Trusts upon dissolution.

11. The Exchanges will not be effected unless and until each of the following conditions is satisfied: (a) The Company's Form N-1A and Form N-14 registration statements have been declared effective; (b) the Plans have been approved by the Participants of the Trusts; (c) the SEC has issued an order relating to this application; and (d) the Participants have received a favorable opinion of counsel regarding the tax consequences of the Exchanges.

12. The Adviser will assume all costs of the Exchanges, including the cost of transferring portfolio securities to the Company's custodian and the issuance costs (except registration and filing fees) of the Company's shares issued in the Exchanges, as well as the legal fees and expenses relating to this application and obtaining the opinion of counsel on certain tax matters.

13. A majority of the members of the Board of Directors of the Company (the "Board") are not "interested persons" as that term is defined in the Act. The Board has considered the desirability of

the Exchanges from the point of view of the Company and the Trusts, and a majority of the Board, including a majority of the non-interested members of the Board, have concluded that: (a) The Exchanges are in the best interest of the respective Funds, the Trusts, and the Participants; (b) the Exchanges will not dilute the respective interests of the Participants of the Trusts when their interests are converted into Company Shares; and (c) the terms of the Exchanges as reflected in the Plans will be reasonable and fair, will not involve overreaching, and will be consistent with the policies of the Funds and the Trusts.

Applicants' Legal Conclusions

1. Applicants seek an exemption under section 17(b) of the Act from the provisions of section 17(a) to the extent necessary to permit the Funds to acquire the assets of the Trusts in exchange for shares of the Funds. Section 17(a), in pertinent part, prohibits an affiliated person of a registered investment company, or an affiliated person of such person, from selling to or purchasing from such investment company any security or other property.

2. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person directly or indirectly controlling, controlled by, or under common control with, such other person. The Trusts may be considered affiliated persons of the Company because the Trusts and the Company may be deemed to be under the common control of the Adviser. Similarly, the Affiliated Persons may require relief from section 17(a) because they could be deemed to be affiliated persons of the Trusts and therefore affiliated persons of the Company.

3. Section 17(b) authorizes the SEC to exempt any person from the provisions of section 17(a) if evidence establishes that: (a) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (b) the proposed transaction is consistent with the policy of the registered investment company; and (c) the proposed transaction is consistent with the general purposes of the Act. Applicants assert that each of these standards is met.

4. Given the similarity of investment objectives and policies of the Funds and their corresponding Trusts, each Fund will be attempting to assemble a portfolio of securities substantially similar to that held by the corresponding Trust. The Funds will acquire portfolio securities, for which

market quotations are readily available, from the Trusts at their independent "current market price," as defined in rule 17a-7 under the Act. Neither the participants nor the Adviser or the Affiliated Persons will be in a position to influence the valuation of the securities acquired by the Funds. Further, the Funds have the opportunity to purchase the portfolio securities of the Trusts with lower transaction costs than would have been possible purchasing such securities in the open market.

5. The proposed Exchanges do not give rise to the abuses that section 17(a) was designed to prevent. After the Exchanges, Participants will hold substantially the same assets as shareholders of the Funds as they had previously held as Participants. In this sense, the Exchanges can be viewed as a change in the form in which assets are held, rather than a disposition giving rise to section 17(a) concerns.

For the SEC by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

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[Release No. 35-26300]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

June 2, 1995.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 26, 1995, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so